2025:AHC:211368

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL REVISION No. - 6771 of 2024

Rameshavar Dayal

.....Revisionist(s)

Versus

State Of U.P. And 3 Others

.....Opposite Party(s)

Counsel for Revisionist(s)	:	Sanjive Kumar Gupta
Counsel for Opposite Party(s)	:	G.A., Nagendra Kumar Singh

AFR

Court No. - 51

HON'BLE DR. AJAY KUMAR-II, J.

1. Heard Sri Sanjive Kumar Gupta, learned counsel for the revisionist and learned A.G.A. for the State. None is present on behalf of private opposite parties.

2. Instant Criminal Revision has been preferred challenging the order dated 28.10.2024 passed by learned Additional Sessions Judge/ Fast Track Court (Crime against Women), Budaun in S.T. No. 2049 of 2023 (State of U.P. Vs. Anil) arising out of Case Crime No.324 of 2023, under Sections 498-A, 306 IPC, Police Station Ujhani, District Budaun, whereby application under Section 319 Cr.P.C. moved by the revisionist/informant has been rejected.

3. The facts giving rise to the present criminal revision in short are that revisionist/informant lodged an FIR by moving a written complaint against his son-in-law Anil (who was married to his daughter Vineeta on 09.11.2016) alongwith his father Pappu @ Rishipal, mother Nanhe @ Rambeti and Sudha Devi (Nanad). In his complaint, it has been alleged that he had married his daughter with Anil as per Hindu customs and traditions and had spent Rs. 04 lakhs in the marriage, yet Vineeta's husband and Anil, father-in-law Pappu @ Rishipal, mother-in-law Nanhe @ Rambeti and sister-in-law Sudha Devi were not happy with the expenditure and they demanded a motorcycle as additional dowry. The

revisionist/informant alleged therein that son-in-law and their family members were mentally and physically harassing his daughter for demand of motorcycle as additional dowry. They threatened to kill Vineeta for arranging second marriage of Anil. Many times the dispute between the parties were settled through Panchayats, yet her matrimonial family members used to tease and torture her regularly and in the meantime, two children, one son and one daughter, were born out of their wedlock. On 14.06.2024 at about 04:00 in the evening, information through phone call was received by Prempal (uncle of deceased and brother of informant) that Vineeta has been murdered by strangulation by her in-laws. On receiving this information, informant, informant’s brother Prempal, son Umesh and informant’s wife Virawati and others villagers reached to matrimonial home of Vineeta and they found that police had already sent the dead body for postmortem to Budaun. They reached the postmortem office, and seeing Vineeta's dead body after postmortem, they found injury marks on her body and neck. He is fully convinced that above mentioned persons have murdered her daughter for additional demand of dowry within 06 years 07 months and 06 days of her marriage. On the aforementioned written complaint of revisionist/informant, first information report as Case Crime No. 324 of 2023 was registered on 23.06.2023 in the concerned police station against named accused.

4. After completion of investigation, the investigating officer has submitted chargesheet only against accused Anil, while exonerating the other named accused Pappu @ Rishipal, Nanhe @ Rambeti and Sudha Devi on finding no involvement of these named accused. After taking cognizance of the chargesheet, the case was committed to the Court of Sessions, and during trial statements of PW-1 and PW-2 were recorded and thereafter an application under Section 319 Cr.P.C. was moved, which has been rejected by means of impugned order. Feeling aggrieved by impugned order present criminal revision has been preferred by the first informant- revisionist.

5. It has been argued by learned counsel for the revisionist that during trial PW-1 Rameshwar Dayal (revisionist/informant) and PW-2 Prempal (brother of the informant and uncle of the deceased) in their depositions have supported the prosecution version regarding the involvement of

opposite parties- 2 to 4 in the crime. Both of these witnesses have stated on oath that opposite parties- 2 to 4 alongwith main accused Anil were consistently demanding motorcycle as additional dowry, and on account of non-fulfillment of their demand, they were jointly harassing and torturing Vineeta. It has also been argued that opposite parties-2 to 4 were named in the FIR, and even during the course of the investigation, informant -revisionist and other witnesses including Prempal have supported the prosecution version in their statements recorded under Section 161 Cr.P.C. However, the Investigating Officer has wrongly separated their names from the investigation. PW-1 and PW-2 have consistently deposed regarding demand of additional dowry in the shape of motorcycle by opposite parties- 2 to 4 and harassment of deceased Vineeta on account of non-fulfillment of said additional demand of dowry. The learned trial court has failed to appreciate the correct facts and circumstances of the case and has also failed to appreciate the statements on oath of PW-1 and PW-2 regarding involvement of opposite parties-2 to 4 in the commission of said crime, and has passed the impugned order in a mechanical manner. It was lastly urged that present Criminal Revision may kindly be allowed and opposite parties-2 to 4 may kindly be summoned to face trial alongwith main accused Anil.

6. Per contra, learned A.G.A. vehemently opposed the present criminal revision. According to learned A.G.A., the court below has correctly appreciated the testimony of PW-1 and PW-2 and has rightly come to the conclusion that from their depositions no ground to summon opposite parties- 2 to 4 has been made out. It has been urged that no good ground to interfere in the impugned order is made out. Learned A.G.A. thus urged for dismissal of present criminal revision.

7. Before considering the rival submissions of the parties it would be appropriate to refer judgment of Apex Court, wherein scope of Section 319 Cr.P.C. has been elaborately discussed. Apex Court in **Hardeep Singh Vs. State (2014) 3 SCC 92** has observed that power under Section 319 Cr.P.C. is a discretionary and an extraordinary power. It is to be exercised sparingly and only in those cases where the circumstances of the case so warrant. It is not to be exercised because the Magistrate or the Sessions Judge is of the opinion that some other person may also be guilty

of committing that offence. Only where strong and cogent evidence occurs against a person from the evidence led before the court that such power should be exercised and not in a casual and cavalier manner.

8. Apex Court in the case of **Hardeep Singh vs. State of Punjab reported in (2014) 3 SCC 92**, in para no.12 has held as under:

"Section 319 of Cr.P.C springs out of the doctrine judex damnatur cum nocens absolvitur (Judge is condemned when guilty is acquitted) and this doctrine must be used as a beacon light while explaining the ambit and the spirit underlying the enactment of Section 319 Cr.P.C".

9. Apex Court in the case of **Vikas vs. State of Rajasthan (2014) 3 SCC 321**, has observed that Section 319 Cr.P.C demands more circumspection by the trial court while exercising it's power, since it confers an extraordinary power and should be used by the Court very sparingly thereby ensuring that principles of the rule of law and basic tenets of criminal law jurisprudence are not vitiated.

10. Apex Court in the case of **Juhru and others Vs. Karim and Another AIR 2023 SCC 1160**, has further reiterated that the power of summoning under Section 319 of Cr.P.C. should not be exercised routinely, and the existence of more than a prima facie case is sine qua non for summoning an additional accused. The relevant paragraph No.16 is reproduced as under:-

"16. It is, thus, manifested from a conjoint reading of the cited decisions that power of summoning under Section 319CrPC is not to be exercised routinely and the existence of more than a prima facie case is sine qua non to summon an additional accused. We may hasten to add that with a view to prevent the frequent misuse of power to summon additional accused under Section 319CrPC, and in conformity with the binding judicial dictums referred to above, the procedural safeguard can be that ordinarily the summoning of a person at the very threshold of the trial may be discouraged and the trial court must evaluate the evidence against the persons sought to be summoned and then adjudge whether such material, more or less, carry the same weightage and value as has been testified against those who are already facing trial. In the absence of

any credible evidence, the power under Section 319CrPC ought not to be invoked."

11. In view of the aforesaid settled propositions of law, this Court is of the considered opinion that a person can only be summoned as an accused, when the trial Court, after analyzing the evidence available on record strongly feels that there is sufficient and overwhelming evidence available on record and it is expedient for justice to summon him as accused. At the time of summoning under Section 319 Cr.P.C., the Court has to see that there is a strong and cogent evidence against such person and not merely probability of his complicity. The degree of satisfaction of the Court is much stricter. The test that has to be applied is one which is more than prima facie, case as exercised at the time of framing of charge, but short of satisfaction to an extent that the evidence if goes unrebutted, would lead to conviction. Only in such situation, the trial Court, using its extraordinary jurisdiction, may summon a person as an accused in the interest of justice.

12. Apex Court in **Kahkashan Kausar @ Sonam Vs. The State of Bihar (2022) 6 SCC 599**, while relying upon **K. Subba Rao Vs. State of Telangana** has given a note of caution that courts should be careful in proceedings against distant relatives in crimes pertaining to matrimonial disputes and dowry deaths. The relatives of the husband should not be roped in on the basis of omnibus allegations unless specific allegations in the crime are made out.

13. Apex Court in **Shivani Vs. State of U.P. and another in Criminal Appeal No. Nil of 2023, arising out of S.L.P (Criminal) No.451 of 2020, vide order dated 12.09.2023** has set-aside the order of trial court, whereby brother-in-law and sister-in-law of the deceased lady were summoned under Section 319 Cr.P.C. to face trial in a case of dowry death. The Apex Court in this case found that the investigating agency had not found involvement of appellants and allegations of harassment against appellants were only omnibus in nature.

14. Apex Court in **Mirza Iqbal @ Goly and Anr. Vs. State of U.P. and another, (2022) 16 SCC 697** has set-aside the FIR and chargesheet filed

against brother-in-law (Dewar) and mother-in-law (Sas) of the deceased lady in a dowry death case. Apex Court found that except vague and bald allegations against appellants i.e. brother-in-law (Dewar) and mother-in-law (Sas), there were no specific allegations disclosing the involvement of appellants to prosecute them in the alleged offence of dowry death.

15. It is thus apparently clear that no prosecution of relative of the husband of a deceased lady in a dowry death case can be sustained merely on the basis of general and omnibus allegations of dowry demand and harassment. Therefore, law on the issue of prosecution of accused persons on the basis of general and omnibus allegation in matrimonial matter, and/or dowry deaths cases is now more or less well settled.

16. Now turning to the merits of the case, I have carefully gone through the record and find that opposite parties- 2 to 4 were named in the FIR. The said FIR was lodged with a delay of 9 days. However, finding no involvement of named accused/ opposite parties- 2 to 4, their names were separated from the investigation and chargesheet was filed only against husband of deceased namely Anil. After framing of charges, the revisionist/informant has examined himself as PW-1 and his uncle Prempal as PW-2. Both these witnesses i.e. PW-1 and PW-2 have stated in their depositions that opposite parties-2 to 4 were not happy with the dowry given at the time of marriage and were demanding one motorcycle in additional dowry. The opposite parties-2 to 4 were physically and mentally harassing and torturing the deceased Vineeta, on account of non-fulfillment of demand of additional dowry and used to say to her that they will murder her and arrange second marriage of accused Anil. These allegations levelled in their depositions are similar to that levelled in FIR. No new fact has emerged in their depositions regarding any specific demand of additional dowry and/or harassment of deceased with any date, time and place. These allegations against opposite parties-2 to 4 are general, vague and omnibus allegations only.

17. It has also come in the depositions of PW-1 and PW-2 that both of these witnesses were not present during the last rituals of the deceased, which were performed by her in-laws. It is also born out of record that they received information of death of Vineeta, only prior to her

postmortem, meaning thereby inquest report of deceased might have been prepared on someone's information and only after preparing the inquest report, the dead body of the deceased might have been sent for postmortem. Copy of inquest report has not been placed on record by the revisionist. In the cross-examination of PW-2, it has specifically been stated that it was accused Anil who has demanded dowry in his presence, therefore, role of only accused Anil is specific.

18. Postmortem of the deceased was conducted on 15.06.2023 and in the opinion of autopsy surgeon, the cause of death of deceased was asphyxia, as a result of ante-mortem hanging. The deceased was having only one single ante-mortem injury in the shape of ligature mark on her neck. No other ante-mortem injury was found on her body. A perusal of postmortem report prima facie reveals death of deceased by hanging, which is not a homicidal death.

19. Thus in view of the above discussions, it is apparently clear that all the allegations against opposite parties-2 to 4 are general and omnibus without referring to any date, time and place as well as nature of offence. For summoning of an accused under Section 319 Cr.P.C., the standard of evidence must be much higher than prima facie case, thought it may not be sufficient to convict the accused persons. But from the perusal of evidence on record, I find that there is not even a prima facie case against opposite parties- 2 to 4 and that is why, learned trial court has rightly rejected the application of the revisionist/informant. The learned trial court while rejecting the application under Section 319 Cr.P.C. of the revisionist /informant has passed a speaking order and I find no illegality or irregularity or jurisdictional error in the impugned order.

20. On the pointed query, being made to the learned counsel for the revisionist, as to whether there was any jurisdictional error committed by the court below in rejecting the application moved by the revisionist/applicant under Section 319 Cr.P.C. Learned counsel for the revisionist only argued on factual score.

21. This Court in exercise of the revisional jurisdiction cannot embark upon the inquiry with regard to the facts of the case, particularly when the

Court below had applied its mind and taken a view which does not appears to be perverse and palpable while rejecting application under Section 319 Cr.P.C.

22. The applicant in the present revision, is trying to insist this revisional Court to go into the factual issues, which cannot be gone into in the present facts of the case, as this Court is of firm opinion that there exist sufficient material which itself shows that the powers exercised by the Court below while rejecting his application, does not suffer from any illegality and infirmity.

23. The learned counsel for the revisionist has also not disputed the legal position, so culled out by Apex Court in relation to the scope and ambit of the powers under Section 319 Cr.P.C., and further he has not been able to bring on record, any material to show that the findings recorded by Court below while rejecting the application of the revisionist/applicant, suffers from any perversity or illegality. No good ground is made out, so as to justify interference by this Revisional Court.

24. Accordingly, the present revision lacks merit and the same is **dismissed.**

November 25, 2025
Ashish/-

(Dr. Ajay Kumar-II,J.)

Digitally signed by :-
ASHISH KUMAR SINGH
High Court of Judicature at Allahabad